



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations
of International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

Case No.: IT-03-69-PT

Date: 1 August 2003

Original: ENGLISH

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Patrick Robinson
Judge O-Gon Kwon

Registrar: Mr. Hans Holthuis

Decision of: 1 August 2003

PROSECUTOR

v.

**JOVICA STANIŠIĆ
FRANKO SIMATOVIĆ**

**DECISION ON PROSECUTION MOTION
FOR PROTECTIVE MEASURES**

Office of the Prosecutor:

Mr. Dermot Groome
Ms. Camille Bibles

Counsel for the accused:

Mr. Vladan Vukčević and Mr. Slobodan Vukčević, for Jovica Stanišić
Mr. Zoran Jovanović, for Franko Simatović

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“International Tribunal”),

BEING SEISED of a confidential “Prosecution’s Motion for Protective Measures for Victims and Witnesses” filed by the Office of the Prosecutor (“Prosecution”) filed on 5 June 2003 (“the Motion”), seeking various orders granting protective measures to victims and witnesses and orders for non-disclosure of material to the public, and the responses to the Motion filed by counsel for the accused, Franko Simatović, and by counsel for the accused, Jovica Stanišić, on 29 July 2003,

NOTING the objections raised by the Defence to the relief sought in paragraph 12, sub-paragraphs (2) and (3) relating to disclosure of material to potential defence witnesses, sub-paragraph (4) relating to contact with prosecution witnesses, sub-paragraph (6) relating to the return of material at the conclusion of the case, sub-paragraph (7) relating to redaction of material to be disclosed under Rule 66 (A)(i) of the Rules of Procedure and Evidence (“Rules”) and use of new pseudonyms, and sub-paragraph (8) relating to redaction of the current whereabouts of witnesses from material to be disclosed under both Rule 66 (A)(i) and Rule 66 (A)(ii),

NOTING the Order of the pre-trial Judge of 3 July 2003 granting the “Prosecution’s Motion for Extension of Time to Serve Supporting Material” filed on 2 July 2003 (“Motion for Extension of Time”) and relieving the Prosecution of the obligation to disclose to the Defence within thirty days the supporting material which accompanied the indictment on confirmation, pending determination of the Motion,

NOTING that no date has yet been fixed for disclosure pursuant to Rule 66 (A)(ii) of the Rules,

CONSIDERING that Article 20 of the Statute of the International Tribunal (“Statute”) requires the Trial Chamber to ensure that proceedings are conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses,

CONSIDERING the rights of the accused under Article 21, paragraph 2, of the Statute to a fair and public hearing, subject to Article 22 of the Statute,

CONSIDERING, in particular, that the relief sought by the Prosecution pursuant to paragraph 12, sub-paragraphs (2) and (3), and the objections raised by the Defence in relation thereto, may be adequately addressed by arrangements for limited disclosure, as provided for in this Decision, and that the relief sought by the Prosecution pursuant to sub-paragraph (4) is appropriate only with regard to witnesses who have been granted protective measures in this or other proceedings,

CONSIDERING that, save as otherwise provided in this Decision, the protection sought is necessary and appropriate, while still remaining consistent with the rights of the accused,

CONSIDERING that the nondisclosure obligations contained in this Decision apply to all members of the Defence teams such that it is the obligation of lead counsel to ensure compliance by all members of his or her team both during their participation and upon withdrawal from the case, such that the relief sought by the Prosecution pursuant to paragraph 12, sub-paragraph (5) is unnecessary,

PURSUANT TO Articles 20, 21, paragraph 2, and 22 of the Statute and Rules 54, 69 and 75 of the Rules,

HEREBY GRANTS the Motion in part and **ORDERS** as follows:

- (1) The Prosecution shall, within fourteen days, disclose to the Defence the supporting material that accompanied the indictment on confirmation without redaction unless the Prosecution has by that date filed: (a)(i) a notice confirming that the material has been disclosed in the same format as provided to the confirming Judge; or (ii) that redactions have only been made pursuant to protective measures already granted in connection with other proceedings at the International Tribunal, and giving details of such protective measures (such details to be filed *ex parte* if appropriate); or (b) an application for

- protective measures in respect of each individual witness in respect of whom redaction or the use of a pseudonym is sought;
- (2) the Defence shall not disclose to the public any confidential or non-public material disclosed by the Prosecution pursuant to Rules 66 (A)(i), 66 (A)(ii) and 68, including the names, identifying information or whereabouts of any witness or potential witness, or any evidence or written statement of any witness or potential witness or the substance thereof, except to the limited extent that such disclosure to members of the public is directly and specifically necessary for the preparation and presentation of the accused's case of the knowledge of the accused or his counsel or representatives;
 - (3) if the Defence or their representatives or agents acting pursuant to their instructions wish to contact any witness who is the subject of protective measures, the Defence shall notify the Prosecution so that the Prosecution may make the necessary arrangements for such contact, in the event that the protected witness is willing to be contacted by the Defence;
 - (4) all confidential or other non-public material disclosed to the Defence shall be returned to the Registry or destroyed following the close of these proceedings;

DENIES the relief sought in paragraph 12, sub-paragraph (8) in relation to redaction of material to be disclosed pursuant to Rule 66 (A)(ii) as being premature and

DIRECTS the Prosecution to file specific applications in respect of each potential witness for whom such protection is sought at the earliest possible opportunity.

For the purpose of this decision, "the public" means and includes all persons, governments, organisations, entities, clients, associations and groups, other than the Judges of the International Tribunal, the staff of the Registry, the Prosecutor and her representatives, the accused in this case, the defence counsel, legal assistants and other members of the defence teams, their agents or representatives. "The public" also includes, without limitation, family, friends, and associates of the accused; accused in other cases or proceedings before the International Tribunal; defence counsel in other cases or proceedings before the International Tribunal and the media and journalists.

“The Defence” means only the accused, Jovica Stanišić and Franko Simatović, their defence counsel, legal assistants and staff as assigned by the Registrar of the International Tribunal to each defence team.

Done in English and French, the English text being authoritative.



Judge O-Gon Kwon

Dated this first day of August 2003
At The Hague
The Netherlands

[Seal of the Tribunal]